

AMENDING THE INDIAN FINANCING ACT OF 1974,  
S. 2614

MAY 18 (legislative day, MAY 14), 1984.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs,  
submitted the following

REPORT

[To accompany S. 2614]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2614) To Amend the Indian Financing Act of 1974, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

The amendments are as follows:

At page 1, line 5, of the bill, add "Section 2. (a) Section 101 of the Indian Financing Act of 1974 (25 U.S.C. 1461) is amended.

(1) By striking out "who are not members of or eligible for membership in an organization which is making loans to its members."

At page 1, line 6, strike out "Sec. 2" and insert in lieu thereof "Sec. 3".

At page 2, line 15, strike \$200,00" and insert in place thereof \$250,000."

At page 2, line 2, strike out "Sec. 3" and insert in lieu thereof "Sec. 4".

At page 3, line 24, strike out "Sec. 4" and insert in lieu thereof "Sec. 5".

At page 4, line 23, strike out "Sec. 5" and insert in lieu thereof "Sec. 6".

PURPOSE

This bill is proposed in order to attract private sector funding by providing for the continued operation of the loan guaranty program and expanding the financing opportunities through the loan guaranty program to individual Indians. The bill will help in the development of the economies of Indian reservations.

## BACKGROUND AND NEED

The Indian Financing Act of 1974 (25 U.S.C. 1451, et. seq.) established three major programs. Title I of the 1974 Act consolidated four existing revolving loan programs of the Bureau of Indian Affairs (BIA) into a single Indian revolving loan fund and increased the authorization for this program by \$50 million, of which \$45 million was appropriated. Under this program direct federal loans are made to tribes, Indian organizations, and individual Indians at relatively low interest rates for economic purposes.

Title II of the 1974 Act established the loan guaranty and insurance program. The purpose of this program is to provide access to private money sources through guaranteeing or insuring loans which otherwise would not be available to Indian tribes and organizations, individual Indians, and Alaskan Natives for economic development. In addition, Title III of the Act authorized interest subsidy payments on guaranteed or insured loans to reduce the Indian borrower's interest rate to that rate chargeable under the direct loan program.

Title IV of the 1974 Act established the Indian business development program in which nonreimbursable grants of up to 40 percent of the funding need are made to establish enterprises on or near reservations. The title provides that grants may not exceed \$50,000, that at least 60 percent of the funds needed must come from other sources, and that the Secretary must assure that the applicant reasonably makes his own financial resources available for the enterprise. Fiscal year 1979 was the last year funds were authorized to be appropriated for this title.

Although only \$63.4 million has been appropriated for the Indian revolving loan fund since 1934, a total of \$163.2 million has been made in loans. This has been accomplished because of the revolving feature of the fund. Since the Indian revolving loan fund has generated a net profit of \$18.4 million and is self-supporting through collections, this program will be able to operate at a limited level without additional authorization. However, without enactment of the amendments contained in the bill, the BIA will be unable to guarantee any new loans after fiscal year 1984 under the Indian Financing Act. Only the revolving loan fund will be available.

The bill would amend the Act so that its loan guaranty program may continue to operate up to the original limitation of \$200 million as authorized in the 1974 Act. In addition, the bill contains amendments which are clarifying and technical in nature.

The bill amends the Act as follows:

- (1) Permits the guaranteeing or insuring of lands to tribal members regardless of whether the tribe has a credit program;
- (2) Increases the limitation on guaranteed loans to individual Indians from \$100,000 to \$250,000;
- (3) Preserves the loan guaranty and insurance fund from depletion; and
- (4) Clarifies that the federal government stands behind the loan guarantees, insurance and interest subsidy agreements.

## LEGISLATIVE HISTORY

S. 2614 was introduced by Senator Mark Andrews for himself and Senator Mark Hatfield on the 3rd day of May, 1984.

H.R. 5519, a house bill amending the Act, was introduced by Mr. Udall for himself and Mr. McNulty, Mr. McCain and Mr. Richardson. The House bill does appropriate the sum of \$6,000,000 per year for the purpose of making interest payments whereas the Senate bill appropriates the sum of \$5,500,000.

Further, the House bill in Section 8 and Section 9 amends Section 402 and 403 of the Act (25 U.S.C. 1522, 1523) by making additional appropriations.

## SECTION-BY-SECTION ANALYSIS

Section 2 of the bill simply removes the requirement in the Act that members of tribes with an active program are ineligible to participate in the program.

Section 3 amends the bill to remove the reference to the Leavitt Act because of a recent Supreme Court decision declaring the legislative veto unconstitutional.

Section 4(1) strikes out an exclusionary clause as in Section 2 above; increases the amount to be guaranteed from \$100,000 to \$250,000; assert the obligation of the United States as guarantor; and sets forth with particularity the duties of the Secretary and the authority for appropriations to fulfill obligations with respect to losses.

Section 5 amends Section 301 of the Act expresses the obligation of the United States as guarantor; authorizes such appropriations as are necessary for authorized interest payments; and authorizes an appropriation of \$5,500,000 for each fiscal year for purpose of making authorized interest payments.

Section 6 amends Section 503 of the Act strikes out the 5 percent limitation on appropriated funds which are available for management and technical assistance.

## COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, at its business session on May 9, 1984, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2614, as amended.

## AMENDMENTS

The Select Committee on Indian Affairs, at its business session on May 9, 1984, ordered S. 2614 be reported with two amendments. These amendments are set forth at the beginning of this report.

## REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2614 will have no impact on regulatory or paperwork requirements.

## COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 2614, as amended, as provided by the Congressional Budget Office is outlined below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., May 16, 1984.

Hon. MARK ANDREWS,  
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart  
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2614, the Indian Financing Act Amendments of 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

## CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 16, 1984.

1. Bill number: S. 2614.
2. Bill title: Indian Financing Act Amendments of 1984.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, May 9, 1984.
4. Bill purpose: The bill makes several changes to the Indian Financing Act of 1974 that would change the eligibility criteria for loans, the maximum loan size, and the review procedures required of the Secretary of the Interior. The bill also explicitly reaffirms the guarantee of the United States government for loans issued under provisions of the Indian Financing Act.

The bill authorizes the appropriation of funds to honor defaulted loans and to pay interest subsidies.

5. Estimated cost to the federal government: The bill would make possible \$95 million in subsidized loan guarantees over the 1985-1989 period, which would represent additional contingent liabilities of the federal government. The estimated annual appropriations necessary to pay the interest subsidies on both new and old guaranteed loans are shown in the following table.

## Estimated authorization level:

Fiscal year:	Millions
1985	\$1.4
1986	1.9
1987	2.5
1988	3.0
1989	3.5

## Estimated outlays:

Fiscal year:	
1985	1.4
1986	1.9
1987	2.5
1988	3.0
1989	3.5

In addition to these funds the bill authorizes appropriations for defaulted loans. This estimate does not include estimated authorizations for default costs, because of the lack of data needed to estimate, with



confidence, guaranteed loan default rates. Based on recent program experience, actual appropriations for defaults are likely to range from zero to \$2 million annually over the five-year period covered by this bill. The actual appropriation for defaults would depend on future program operations and general economic conditions.

The costs of this bill fall within budget function 450.

*Basis of estimate.*—The costs of this bill are those attributable to annual appropriations for interest subsidies and unrecovered losses from defaulted loans. The cost of interest subsidies for loans made prior to fiscal year 1985 is estimated to be \$860,000 annually for fiscal years 1985 to 1989. For loans guaranteed from fiscal years 1985 to 1989 it was assumed that new guarantees would be issued at the rate of \$19 million a year at an average subsidy of 2.75 percent. All monies are assumed to be disbursed in the year appropriated. Actual operations of the loan guarantee fund (including defaults, prepayments and cancellations) could affect these estimates.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Linwood T. Lloyd.

10. Estimate approved by: C. G. Nuckols (For James L. Blum, Assistant Director for Budget Analysis).

#### EXECUTIVE COMMUNICATIONS

The Committee has not received a formal legislative report on S. 2614. In hearings before this Committee, the Department of the Interior supported enactment of the bill with amendments.

#### STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, MAY 9, 1984

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 2614, a bill to amend the Indian Financing Act of 1974.

We support enactment of S. 2614 if amended as we suggest.

A fundamental prerequisite to economic development is capital formation. It is the policy of this administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. This will require a cooperative effort among the tribes, the Federal Government, and the private sector in developing reservation economies. Federal support is needed to attract private capital. Although tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed.

S. 2614 would amend the Indian Financing Act to provide for the continued long-term operation of the loan guarantee program, and expand the financing opportunities through the loan guarantee program to individual Indians for participation in the development of reservation economies. Specifically, S. 2614 would (1) permit the guaranteeing or insuring of loans to tribal members regardless of whether the tribe has a credit program; (2) increase the limitation on guaranteed loans to individual Indians from \$100,000 to \$200,000; (3) preserve the loan guarantee and insurance fund from depletion by

providing for annual appropriations for interest subsidies and loan guarantees; and (4) clarify that the full faith and credit of the Federal Government is assured on the loan guarantee, insurance and interest subsidy agreements.

### *Background*

The Indian Financing Act of 1974 established three major programs. Title I of the 1974 act consolidated four existing revolving loan programs of the BIA into a single Indian revolving loan fund. Under this program, direct Federal loans are made to tribes, Indian organizations, and individual Indians at relatively low interest rates for economic purposes. While only \$63.4 million has been appropriated for the Indian revolving loan fund since 1934, a total of \$163.2 million has been made in loans. This has been accomplished because of the revolving feature of the fund. The Indian revolving loan fund has generated a net return of \$18.4 million and is self-supporting through collections. This program will be able to operate without additional authorization.

Title II of the 1974 Act established the loan guarantee and insurance program. The purpose of this program is to provide access to private money sources through guaranteeing or insuring loans which otherwise would not be available to Indian tribes and organizations, individual Indians, and Alaskan Natives for economic development. In addition, Title III of the act authorized interest subsidy payments on guaranteed or insured loans to reduce the Indian borrower's interest rate to that rate chargeable under the direct loan program.

Title IV of the 1974 Act established the Indian business development program in which nonreimbursable grants of up to 40 percent of the funding needed are made to establish enterprises on or near reservations. This title provides that grants may not exceed \$50,000, that at least 60 percent of the funds needed must come from other sources, and that the Secretary must assure that the applicant reasonably makes his own financial resources available for the enterprise. Fiscal year 1977 was the last year funds were appropriated for this title.

Title V of the 1974 Act authorized up to 5 percent of the funds available for the loan guarantee program to be used for technical assistance.

Without enactment of the amendments to title II and III contained in S. 2614, the BIA will be able to guarantee very few new loans after fiscal year 1984 under the Indian Financing Act. Only the revolving loan fund will be available.

### *Comments and recommendations*

S. 2614 would amend the Indian Financing Act of 1974 so that its loan guarantee program may operate up to the limitation of \$200 million as authorized in the 1974 Act. In addition, the bill contains amendments that are clarifying and technical in nature.

Section 2 of S. 2614 would amend section 105 of the Indian Financing Act to remove the reference to the provision known as the Leavitt Act. Under that section, the Secretary has the authority to cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof made from the revolving loan fund that he determines to be uncollectable in whole or in part, or which is collectable only at an

unreasonable cost, or when such action would, in his judgment, be in the best interest of the United States. However, the Secretary's actions do not become effective until they are submitted to and approved by the Congress, as provided in the Leavitt Act because of a recent Supreme Court decision in *Immigration and Naturalization Service v. Chadha*, the constitutionality of the Leavitt Act's legislative veto provision has been questioned. In order to operate our loan program, the Secretary's authorities must be constitutional.

Section 3(a) of the bill would amend section 201 of the Indian Financing Act to remove a restriction that precludes the Secretary from guaranteeing or insuring loans made by private lenders to those individual Indians who are members of tribes having a tribal credit program. In many instances, tribal credit programs are unable to meet the financial needs of their members because of limited resources. By removing this restriction, individual Indians will have another financing mechanism available to them. These individuals, however, would still be required to use their tribal credit program if it can meet their financial needs.

Section 3(a) would also amend section 201 of the act to provide that the loan guarantees and insurance made by the Secretary are backed by a pledge of the full faith and credit of the United States. The Departments of Justice and Treasury informed us that this amendment should not be included in legislation, as previous Attorney General's opinions have made it clear that such language is unnecessary. We therefore recommend amending S. 2614 to strike this language.

Section 3(b) would amend section 204 of the Indian Financing Act to increase the guaranteed loan limitation to individual Indians from \$100,000 to \$200,000. The \$100,000 limitation was an adequate amount for establishment of an individual business in 1974; however, with inflation and the increased business costs having risen over 100 percent since that time, the higher limitation is appropriate.

In addition, section 3(b) would amend section 204 of the act to require the Secretary to adopt sound credit procedures to minimize losses. This would involve reviewing each loan application individually and independently from the lending institution. Once the loan has been approved, the Secretary is directed, along with the lender, to maintain close supervision of the management of the loan until it has been liquidated. We do this at present by internal regulations and our administrative procedures, but there is no harm in having the understanding clearly on the record.

Section 3(c) of the bill would amend section 211 of the Indian Financing Act to remove the reference to the Leavitt Act. This provision is similar to that in section 2 of the bill, except that this section relates to the loan guarantee program.

Section 3(d) of the bill would amend section 217 of the act to authorize annual appropriations to replenish the loan guarantee fund for losses and to fulfill Federal obligations under this program. Since 1974, the loan guarantee portion of the fund has paid out about \$5 million in losses, while income from premiums and other sources has brought in about \$2.2 million. The implied subsidization is almost 60 percent. Because the loan guarantee fund has not operated like a true revolving fund, we recommend reclassifying the loan guarantee revolv-



ing fund as a general fund appropriations account and requesting annual appropriations for the purposes of paying guaranteed loans which have been defaulted, making interest subsidy payments and providing management and technical assistance. Such an arrangement would reflect the true nature of the program and permit more budgetary control. In view of the importance of this program to the Indian community, we recommend that (1) all collections (such as premiums and income from collateral and loan repayments) continue to be credited to the reclassified account, and (2) all amounts in the original guarantee revolving fund be transferred to the reclassified account. Although the reclassification can be accomplished administratively, it will require the following technical amendments. Section 3(d) of S. 2614 should be amended by striking the words "for deposit into the fund" in new section 217(e) of the act and adding at the end of new section 217(e) the following sentence: "All collections and appropriations shall remain available until expended."

Section 4(a) of the bill would amend section 301 of the act to provide that any interest subsidy agreements under the loan guarantee program are backed by the pledge of the full faith and credit of the United States. As noted in my comment on section 3(a), we feel this language is unnecessary and propose its deletion by amendment.

Section 4(b) would amend section 302 of the Indian Financing Act to authorize appropriations to cover interest payments for loans made before the close of fiscal year 1984. Section 4(B) would also authorize, beginning in fiscal year 1985, an annual appropriation not to exceed \$5.5 million for payment of interest subsidies on loans made after fiscal year 1984. Although the Indian Financing Act authorized \$60 million for the loan guarantees, only \$45 million has been appropriated. Based upon a loan guarantee program of \$19 million in 1984, we anticipate that the loan guarantee fund will have a cash balance of only \$28.1 million on September 30, 1984. However, this balance will be obligated for interest subsidies (\$13.3 million) and reserve for losses (\$12.3 million) leaving \$2.5 million available to guarantee new loans. We had a savings on some of our loans guaranteed this year, on which we did not need to pay a subsidy, and loans that were guaranteed for less than 90 percent. Under present authority, this would enable a \$6 million program in fiscal year 1985. We estimate that, by the end of fiscal year 1984, we will have obligated our existing appropriations limit except for the \$2.5 million in savings on loan guarantee subsidies, with a variety of due dates. We expect that the \$13.3 million will have been obligated for future interest subsidies on September 30, 1984, will remain obligated and will be paid out on each outstanding obligation as it becomes due. We would therefore recommend that the new section 302(a) as proposed in section 4(b) be deleted, since we have already obligated funds to cover these loans. The new section 302(b) as proposed in section 4(b) is necessary to put the future program on an annual appropriation cycle. We would also recommend including an amendment under section 302 that interest subsidies not exceed 25 percent of the face amount of the loan. The proposed amendment would confirm our understanding on the limits of usage of interest subsidies.

Section 5 of the bill would amend section 503 of the Indian Financing Act to remove the 5-percent limitation on appropriated funds that are available for management and technical assistance. Of the \$45 mil



lion appropriated, \$2,250,000 was set aside for such assistance, and almost \$1.9 million has been used for this purpose. The technical assistance is very important, since it enables us to intervene with appropriate professional help in cases where a loan might otherwise go into default.

Past experience has shown that management and technical assistance still continues to be necessary on some outstanding direct and guaranteed loans. We would recommend remaining with the original intent of the act, however, and to use the premiums to offset in part the costs of defaults. We would therefore recommend that the act be amended to permit annual appropriation of amounts for technical assistance.

With the inclusion of all of our suggested amendments, we recommend enactment of S. 2614.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee states that enactment of this legislation will continue authorization for the program and define the Secretary's duties.



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